

FCC Received October 25, 1993, @ 4:45 p.m.  
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TRANSCRIPT OF PROCEEDINGS  
Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

NOV 3 - 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

IN RE APPLICATOINS OF:

E Z COMMUNICATIONS, INC.  
and

MM DOCKET NO. 93-88

ALLEGHENY COMMUNICATIONS GROUP, INC.

Pittsburgh, Pennsylvania

DATE OF SESSION: October 13, 1993

VOLUME: 2

PLACE OF SESSION: Washington, D.C.

PAGES: 7-138

FREE STATE REPORTING, INC.  
Court Reporting Depositions  
D.C. Area (301) 261-1902  
Balt. & Annap. (410) 974-0947

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ALLEGHENY COMMUNICATIONS GROUP, INC. )

Pittsburgh, Pennsylvania )  
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MM DOCKET NO. 93-88

The above-entitled matter come on for admissions  
session pursuant to Notice before Judge Edward Luton,  
Administrative Law Judge, at 2000 L Street, N.W., Washington,  
D.C., in Courtroom No. 2, on Wednesday, October 13, 1993 at  
10:00 a.m.

APPEARANCES:

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1	I N D E X			
2	<u>E X H I B I T S</u>			
3	<u>Exhibits</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
4	WBZZ Exhibit No. 0	10	10	
5				
6	EZ Exhibit No. 1-A	12	13	
	EZ Exhibit No. 1-B	12	15	
7	EZ Exhibit No. 1-O	12	16	
	EZ Exhibit No. 2	12	18	
8	EZ Exhibit No. 3	12	19	
	EZ Exhibit No. 4	12	26	
9	EZ Exhibit No. 5	12	29	
	EZ Exhibit No. 6	12	29	
10	EZ Exhibit No. 7	12	30	
	EZ Exhibit No. 8	12	32	
11	EZ Exhibit No. 9	12	33	
	EZ Exhibit No. 10	12	34	
12	EZ Exhibit No. 11	12	43	
13				
14	Allegheny Exhibit No. 1	47	48	
	Allegheny Exhibit No. 2	47	48	
15	Allegheny Exhibit No. 3	47		
	Allegheny Exhibit No. 4	47		
16	Allegheny Exhibit No. 5	47		104
	Allegheny Exhibit No. 6	47		109
17	Allegheny Exhibit No. 7	47		112
	Allegheny Exhibit No. 8	47		113
18	Allegheny Exhibit No. 9	47	117	
	Allegheny Exhibit No. 10	47		122
19	Allegheny Exhibit No. 11	47		132
	Allegheny Exhibit No. 12	47		132
20	Allegheny Exhibit No. 13	47	134	
21				
22				
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24				
25	Session began: 10:00 a.m.	Session Ended: 1:15 p.m.		

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## P R O C E E D I N G S

JUDGE LUTON: May I have the appearances, please?

MR. BERFIELD: For Allegheny Communications Group, Inc., Morton Berfield.

MR. ZAUNER: For the Chief, Mass Media Bureau, Robert A. Zauner.

MR. KRAUZ: For EZ Communications, Ray Kraus and Herbert Miller, law firm of Koteen & Naftalin.

JUDGE LUTON: Okay. Thank you. This morning we're going to consider what evidence is going to be received at the hearing in this case. Let's start with, let's start with the licensee.

MR. MILLER: Your Honor --

JUDGE LUTON: All right. Go ahead.

MR. MILLER: Your Honor, I've placed before you and given to the court reporter and to the parties a two page document described Identification of EZ Exhibits. We've -- for the sake of giving it a number call it WBZZ Exhibit No. 0. It's two pages and it is a listing of our proposed exhibits with the number of pages and a brief description. I thought that instead of burdening the transcript with that information we could use this to identify the exhibits and then proceed to offer them in evidence either sequentially or as a group. It would be easier to offer them, offer them in evidence as a group and entertain any objections, but we can do it either

1 way.

2 JUDGE LUTON: All right. And the two page exhibit  
3 that you've provided is intended to be designated Exhibit No.  
4 0?

5 MR. MILLER: Yes, Your Honor.

6 JUDGE LUTON: Okay. No objection to the statements  
7 of contents for identification, is there?

8 MR. BERFIELD: No, there isn't.

9 JUDGE LUTON: All right. I'm going to start by  
10 receiving BZZ Exhibit No. 0.

11 (The document that was referred to as  
12 WBZZ Exhibit No. 0 was marked for  
13 identification and received into  
14 evidence.)

15 JUDGE LUTON: Now, when you said that we could do  
16 this either way, what -- and one of the ways you mentioned was  
17 by groupings. What groupings did you have in mind?

18 MR. MILLER: I could simply say, Your Honor, we  
19 offer EZ Exhibits 1-A through 11 in evidence and then you  
20 could entertain objections to them in order or --

21 JUDGE LUTON: Oh, I see.

22 MR. MILLER: -- as to each one of them I can say I  
23 offer EZ Exhibit 1-A --

24 JUDGE LUTON: Okay.

25 MR. MILLER: -- and then proceed to the next one.

1 JUDGE LUTON: All right. Well, we know what we're  
2 here for and that is to discuss all of this and everything  
3 that's stated here is, in fact, going to be offered.

4 MR. MILLER: Yes.

5 JUDGE LUTON: It's going to be offered, so why don't  
6 you simply make an offer of the whole thing and then we'll  
7 have our discussion about each individual item.

8 MR. MILLER: That seems a lot simpler to me, Your  
9 Honor. Before I do that, let me simply comment that as to EZ  
10 Exhibit 5 which is a statement of the General Manager of the  
11 station concerning his efforts to comply with the Commission's  
12 rules and policies. That exhibit references a number of  
13 attachments. Inadvertently those attachments aren't here, nor  
14 were they exchanged. Mr. Berfield called that to our  
15 attention this morning. What I would propose to do is simply  
16 supply those attachments today and offer Exhibit 5 subject to  
17 your accepting the various attachments. I apologize, but in  
18 the course of putting this thing together we sort of ran into  
19 a crunch.

20 MR. BERFIELD: They were all available on discovery?

21 MR. MILLER: Oh, yes, all of them were available on  
22 discovery.

23 JUDGE LUTON: When you say you'd offer them today,  
24 you mean during, during this hearing, the attachments?

25 MR. MILLER: We -- no. We don't have them. We

1 would offer -- they're back at the office. We would offer  
2 Exhibit 5 minus that attachments, supply the attachments today  
3 and then take two or three minutes when we go to the hearing  
4 and re-offer Exhibit 5 with the attachments.

5 JUDGE LUTON: I see. So that's -- Allegheny will  
6 have an opportunity to formulate its objections if it has any,  
7 state them at the hearing?

8 MR. MILLER: Yes, Your Honor.

9 JUDGE LUTON: All right. That will be okay.

10 MR. BERFIELD: I have no objection to that.

11 JUDGE LUTON: All right.

12 MR. MILLER: With that, Your Honor, we would offer  
13 EZ Exhibits 1-A through 11, previously identified in evidence.

14 JUDGE LUTON: 1-A through 11 --

15 MR. MILLER: Yes, Your Honor.

16 JUDGE LUTON: -- are offered.

17 (The documents that were referred to  
18 as EZ Exhibits No. 1-A through 11  
19 were marked for identification.)

20 JUDGE LUTON: All right. Let's start from the  
21 beginning. Objection to 1-A? It's a statement by Dr. Julian  
22 Bailes, member of the Department of Neurosurgery at Allegheny  
23 General Hospital.

24 MR. BERFIELD: Your Honor?

25 JUDGE LUTON: Yes.

1           MR. BERFIELD: I just one objection there in the  
2 last full paragraph or next to last full paragraph, I guess.  
3 It starts off, "When we initiated the program," and the point  
4 I object to is the -- in the second sentence where it refers  
5 to sending an air personality from the station to the picnic  
6 and so forth, and I would object where it starts, "And by  
7 sending Tyson," and then down to the success of the program  
8 regarding the picnic on the grounds that it doesn't relate  
9 directly enough to, to programming to be included in the  
10 renewal expectancy consideration. I mean, I don't see the  
11 fact that an air personality went to a picnic as being  
12 relevant, Your Honor.

13           JUDGE LUTON: Your response?

14           MR. MILLER: Your Honor, the Commission has  
15 consistently held that community involvement of that sort is  
16 relevant to the renewal expectancy.

17           JUDGE LUTON: I think that's correct. That's  
18 certainly my understanding. I'm going to overrule that  
19 objection. Any other objections to 1 -- 1-A?

20           MR. BERFIELD: No, Your Honor.

21           JUDGE LUTON: All right. Then 1-A is received.

22                           (The document that was previously  
23 marked for identification as EZ  
24 Exhibit No. 1-A was received into  
25 evidence.)



1 JUDGE LUTON: And does Allegheny have objections to  
2 each one of these items?

3 MR. BERFIELD: We do not.

4 JUDGE LUTON: You do not? Okay.

5 MR. BERFIELD: We do not.

6 JUDGE LUTON: Why don't you then, Mr. Berfield, if  
7 you would, lead us to the next one --

8 MR. BERFIELD: Okay.

9 JUDGE LUTON: -- about which you do have an  
10 objection?

11 MR. BERFIELD: Thank you, Your Honor. On 1-B,  
12 statement of Arlene Baxter, third full paragraph --

13 JUDGE LUTON: I'm sorry. Which one is that?

14 MR. BERFIELD: I'm sorry. It's Exhibit 1-B. It's  
15 the statement of Arlene Baxter.

16 JUDGE LUTON: Okay.

17 MR. BERFIELD: And on the first page, the third full  
18 paragraph, the -- I object to the entire paragraph,  
19 particularly the -- not only the reference to an air  
20 personality, but then the reference in the latter part of the  
21 paragraph to the fact that one of the WBZZ morning  
22 personalities was a member of some, some board. I don't see  
23 how a licensee can claim credit for the fact that its staff  
24 may be a member of some board. I mean, usually we don't  
25 normally consider the staffs in comparative evaluation and

1 he's not a principle, so that's the basis of my objection,  
2 Your Honor.

3 JUDGE LUTON: What is your response? About the same  
4 as --

5 MR. BERFIELD: My response is substantially the same  
6 as before. This objection is a little bit different in that  
7 he's complaining about seeking credit for something done by  
8 Mr. Quinn. Mr. Quinn obviously is representing the station in  
9 his relationships with the community. This is all a part of  
10 BZZ community involvement.

11 JUDGE LUTON: I think so. Objection's overruled.  
12 1-B is received.

13 (The document that was previously  
14 marked for identification as EZ  
15 Exhibit No. 1-B was received into  
16 evidence.)

17 MR. BERFIELD: Then the only other objection that I  
18 have on the community witness statements would come on the --  
19 toward the end on 1-0, statement of Mary Root, and again it  
20 would be on page 2 and it's similar to my prior objections,  
21 the reference there on page 2 of Ms. Root's statement as to  
22 the -- her board membership by a BZZ personality, same  
23 objection, your Honor.

24 MR. MILLER: Same response, Your Honor.

25 JUDGE LUTON: Same ruling with respect to O.

1 | Objection is overruled and O is received.

2 |                               (The document that was previously  
3 |                               marked for identification as EZ  
4 |                               Exhibit No. 1-O was received into  
5 |                               evidence.)

6 |               MR. BERFIELD: I have no further objections to the  
7 | community witness statements, Your Honor.

8 |               JUDGE LUTON: All right. What's next as your  
9 | exhibit is structured?

10 |              MR. MILLER: Two.

11 |              JUDGE LUTON: Two is in here somewhere.

12 |              MR. MILLER: There should be a tab, Your Honor. On  
13 | my copy --

14 |              JUDGE LUTON: All right. They are tabbed and I can  
15 | just --

16 |              MR. MILLER: Much closer to the beginning than that.  
17 | It's about half-an-inch from the beginning is where it starts.

18 |              JUDGE LUTON: Okay. Oh, there it is, ascertainment,  
19 | statement of Mr. Meyer. All right. Any objections?

20 |              MR. BERFIELD: I have, I have no objection to the  
21 | -- to Exhibit 2 in terms of its, you know, relevance under the  
22 | renewal expectancy, but I do have a, a question I would  
23 | address to the bench and perhaps you could address it to  
24 | counsel as to whether -- there's obviously been a lot of  
25 | methodology here in the compilation of this exhibit and Mr.

1 Meyer is the sponsoring witness and I just make an inquiry as  
2 to whether Mr. Meyer when he comes will be able to answer the  
3 kinds of questions on exhibit preparation that usually would  
4 come in under voir dire or would there be some other person in  
5 the WBZZ organization who -- whose name should be mentioned  
6 who I might want to call on on the question of methodology of  
7 the preparation of the exhibit?

8 JUDGE LUTON: Well, I don't know and have no way of  
9 knowing just how far Mr. Meyer will be able to go by way of  
10 answering questions that might be put to him. He does tell us  
11 that he direct-- supervised the preparation of the exhibit.  
12 We can rightfully assume that he knows something about it. I  
13 just don't know what to say.

14 MR. BERFIELD: Well, I thought maybe counsel could  
15 enlighten us if there --

16 JUDGE LUTON: Perhaps.

17 MR. MILLER: Your Honor, I think Mr. Meyer will be  
18 quite competent to answer most questions concerning it. This  
19 was, in essence, prepared by keying information into the  
20 database program. If it gets down to the details of how  
21 relational databases function, the algorithms that it uses and  
22 that sort of thing, I rather doubt it, but any reasonable  
23 questions and certainly any that go to its -- to how it was  
24 produced and its substance, Mr. Meyer will be quite competent  
25 to respond to.

1 MR. BERFIELD: Thank you.

2 JUDGE LUTON: I really don't see how we can go  
3 beyond that right now. We'll just have to await developments  
4 and see what developments in that regard.

5 MR. BERFIELD: Thank you, Your Honor. Well then, I  
6 have no objections to Exhibit 2.

7 JUDGE LUTON: All right. Then 2 is received.

8 (The document that was previously  
9 marked as EZ Exhibit No. 2 was  
10 received into evidence.)

11 MR. MILLER: That, Your Honor, takes us --

12 JUDGE LUTON: To 3.

13 MR. MILLER: -- way back to the end of this thing.

14 JUDGE LUTON: Okay.

15 MR. MILLER: Exhibit 3 begins about a fourth-of-an  
16 inch from the, from the back. You've got way -- a long way to  
17 do.

18 JUDGE LUTON: Oh, I've got it. The problem is  
19 turning the pages.

20 MR. MILLER: I see. Maybe we'll try to break these  
21 into two. Is it reasonably convenient this way or would you  
22 -- would it be more convenient with two books?

23 MR. BERFIELD: Well, I think it's -- Your Honor, if  
24 you could --

25 JUDGE LUTON: I'll learn to handle this. It will be

1 okay this way I think if it's okay with everybody else. I'll  
2 adjust to it. Okay. Statement of Mr. Meyer, Exhibit No. 3.

3 MR. BERFIELD: No objection, Your Honor.

4 JUDGE LUTON: All right. This is the EEO  
5 performance. That's received.

6 (The document that was previously  
7 marked as EZ Exhibit No. 3 was  
8 received into evidence.)

9 JUDGE LUTON: 4, statement of Alan Box.

10 MR. BERFIELD: I do have an objection to that, Your  
11 Honor. Exhibit 3 that has just been admitted relates to the  
12 EEO record of, of the station whose license is at issue, WBZZ,  
13 but when we get to the next exhibit, Exhibit 4, as I read the  
14 exhibit -- of course, we don't have Mr. Box here, but I think  
15 it's pretty self-apparent that what they've done is when they  
16 put in here EEO on a lot of other stations that they have and  
17 including their headquarters. And so I would object to that  
18 as not being relevant to the issue of this licensee's right to  
19 retain this license. I mean, what they may have done in other  
20 stations I don't think is relevant.

21 MR. ZAUNER: Your Honor, may I join in that  
22 objection and may also raise an objection? Maybe I'm a little  
23 late on this one. I'm not sure what relevance EEO information  
24 has in any case to the renewal expectancy. There is no  
25 special issue here as to the station's conformity or lack of

1 conformity with EEO requirements. Why are we presenting this  
2 information at all in any form?

3 JUDGE LUTON: All right. Then there are two  
4 objections. One is that the exhibit goes too far and it gives  
5 us information about stations other than the one that is at  
6 issue. Is that right?

7 MR. BERFIELD: That's correct, but I would say that  
8 I think the EEO data is relevant on WBZZ.

9 JUDGE LUTON: I understand that. It is relevant.  
10 They are -- but there is an objection in the form of a  
11 question. Is EEO data even relevant with respect to BZZ?

12 MR. ZAUNER: That's correct, Your Honor.

13 JUDGE LUTON: Okay. I don't know. Let's talk about  
14 it.

15 MR. MILLER: Well, Your Honor, I'd like to respond  
16 to Mr. Zauner's objection first. As the Review Board held in  
17 Metroflex Communications, which is at 4 FCC Record 8149 in  
18 Section -- paragraph 27, compliance with the Act and FCC  
19 Rules, "No review of the licensee record can fail to reflect  
20 whether it has complied with the strictures set down to govern  
21 a broadcaster's conduct," citing central Florida. "Indeed, so  
22 vital is this element as a performance litmus that the  
23 Commission's most recent policy statement on comparative  
24 license renewal tentatively suggests such compliance as the  
25 solitary index by which it might measure license term

1 performance in future renewal cases." So it seems self-  
2 evident that compliance with the Commission's rules generally  
3 is important. Among the Commission's rules are those  
4 concerning equal employment opportunity. Now, that would be  
5 my response to Mr. Zauner's objection. As to the -- as to Mr.  
6 Berfield's objection, EZ Communications is a group owner and  
7 the folks at headquarters do an awful lot to monitor the  
8 performance of the stations and to insure that they comply  
9 with the Commission's rules. BZZ's performance is not  
10 aberrationally good. It's very good, but it is not an  
11 aberration with respect to the performance of the other  
12 stations, and I think we should be able to, to demonstrate  
13 that. You can't consider EZ in a vacuum in that regard. And  
14 this is the performance of the licensee. BZZ is one of the  
15 licensee's stations.

16 MR. ZAUNER: Your Honor, may I reply?

17 JUDGE LUTON: Yes, sir. Let me just look through  
18 here a moment. Okay.

19 MR. ZAUNER: Mr. Miller correctly recites the  
20 holding in Metroflex except that that portion that he reads  
21 has to be read in context with the fact that in that decision  
22 the Review Board was dealing with a specific issue which  
23 concerned the violation of Section 317(a) of the Commission's  
24 rules. Here there is no specific allegation or issue  
25 concerning any violation of the Commission's rules to which



1 | this information is relevant. Moreover, while this exhibit  
2 | apparently goes to the question of whether they have been  
3 | complying with EEO rules, are we to assume by the absence of  
4 | other exhibits going to other Commission rules that the  
5 | station is not in compliance with those rules?

6 | JUDGE LUTON: That's my question, about the way the  
7 | offer is framed.

8 | MR. ZAUNER: For example, Commission filing rules,  
9 | engineering rules, etc. Your Honor, just in -- as I said, I  
10 | may have made this objection a little bit late. I think it  
11 | also goes to the -- bear with me for a second. It also goes  
12 | to Exhibit 3 which concerns WBZZ's annual employment reports.

13 | MR. MILLER: Your Honor, could I have another go at  
14 | it?

15 | JUDGE LUTON: Yes. Go ahead.

16 | MR. MILLER: Your concerns about whether the absence  
17 | of another exhibit suggests that BZZ and the -- and EZ  
18 | Communications are in flagrant violation of all the other  
19 | Commission's rules I think would be resolved by Exhibit 5  
20 | which goes into the procedures established at BZZ to monitor  
21 | and insure compliance with the rules and the procedures at EZ  
22 | Headquarters to make sure that BZZ does that. As to the other  
23 | phase of this, it's true that Metroflex involved a licensee  
24 | who had violated some rules and it's true that there are no  
25 | allegations here that EZ has violated any of them, but to say

1 that you can only look at the bad, and if there is no bad you  
2 can't look at the good, makes very little sense in view of the  
3 language which I just quoted from Metroflex. I don't see how  
4 -- when the Board says no review of the licensee record can  
5 fail to reflect whether it has complied with the strictures  
6 set down to govern the rules, and indeed that's a very  
7 important thing, you can fail to look at evidence that the  
8 licensee has, in fact, done its best to comply with the  
9 Commission's rules over the past license term.

10 JUDGE LUTON: Maybe it's a question of emphasis.  
11 Why is EEO performance broken out specifically, highlighted?

12 MR. MILLER: Because it's quantifiable, Your Honor.  
13 We've broken out the other stuff in Exhibit 5 through Mr.  
14 Meyer's statement that during the entire renewal period and,  
15 indeed, as long as he's been at the station there's been no  
16 notice of violation of any Commission rule. But EEO  
17 performance is reported to the Commission each year in the  
18 employment reports. It's statistical and it's something that  
19 you can quantify. You can't really easily quantify at a  
20 hearing based on easily available records that all of your  
21 tower lights have been on and have been monitored each night.  
22 I guess you could, but I think the Commission has placed a  
23 fair amount of emphasis on this aspect of compliance and we'd  
24 like to be able to have this information on the record.

25 MR. ZAUNER: Your Honor --

1 JUDGE LUTON: All of which seeks to show compliance  
2 with EEO requirements?

3 MR. MILLER: No. It seeks to show substantially  
4 better than average -- better than normal performance. If  
5 you'll look at the, the charts here, you will find that almost  
6 invariably the stations as a whole are at or exceed 100  
7 percent of parity. You'll find that BZZ's own performance is,  
8 is quite good. The average minority employment has been at  
9 almost 100 percent of parity, as the chart at page 3 of  
10 Exhibit 3 shows. The Commission, I believe, expects 50  
11 percent of the parity. Now, BZZ's overall parity has been an  
12 average of close to 150 percent of the parity and in the top  
13 four job categories it's been close to 100. The Commission  
14 has -- it doesn't come down on you unless you fall below 50  
15 percent. So this doesn't simply show that they've squeaked  
16 and have complied. It shows something substantially better  
17 than that, and the same is true of the corporate performance  
18 as a whole.

19 JUDGE LUTON: The same is true with respect to what?  
20 I'm sorry. I missed that.

21 MR. MILLER: The parent, all of the EZ stations.

22 JUDGE LUTON: Okay. If you'll look at the charts  
23 -- let me find one. Well, as explained in -- on page 2 of the  
24 text of Exhibit 4, there was a decrease in EEO performance  
25 during 86/87 because they acquired some stations that had been

1 doing poorly. They required nine affiliated broadcasting  
2 stations and, with some effort, they brought those stations  
3 up. They brought their average up to where it had been. This  
4 seems like a pretty conscientious effort and we would like  
5 this to be reflected in our renewal expectancy.

6 MR. ZAUNER: Your Honor?

7 JUDGE LUTON: Something troublesome about it to me.  
8 You wanted to say something, Mr. Zauner, I believe?

9 MR. ZAUNER: Yes, Your Honor. I was just going to  
10 say that I know of no cases where any license renewal  
11 applicant has received additional credit because its EEO  
12 performance exceeded some average. Either you're in  
13 compliance with the Commission's rules or you're not, and  
14 there's no question but that they are in this proceeding, and  
15 I think that the information is irrelevant.

16 MR. KRAUS: Well, Your Honor, to the extent that it  
17 would permit a finding as the Bureau has stated it, there's no  
18 question that EZ is in compliance. That in and of itself is  
19 useful and important.

20 MR. BERFIELD: Your Honor?

21 MR. ZAUNER: But you don't derive that from this?

22 MR. BERFIELD: Your Honor, I didn't object to  
23 Exhibit 3 which related to WBZZ. I think the licensee's  
24 entitled to make what their -- what showing they can and we're  
25 entitled to challenge it. On Exhibit 4 I just thought it went

1 too far, but I think that's really more a question of weight,  
2 so maybe in the interest of moving this along I'd be willing  
3 to withdraw my objection to Exhibit 4 and have it go in and  
4 just argue the weight of it in findings.

5 JUDGE LUTON: Okay.

6 MR. ZAUNER: I don't think either Exhibit 3 or 4  
7 have any weight.

8 JUDGE LUTON: I'm inclined to agree with the Bureau  
9 that 3 and 4 are meaningless in the context of this  
10 proceeding. However, I'm going to receive both of them and  
11 consider what, if anything, they might be worth at a later  
12 time.

13 MR. MILLER: Thank you, Your Honor.

14 JUDGE LUTON: I think we have some difficulty with  
15 the usefulness of both 3 and 4, but I'm not satisfied that on  
16 the basis of the arguments that I've heard this morning I  
17 ought to at this time reject those offerings entirely. I'll  
18 consider them. I'd like to give some thought to what I've  
19 heard stated as the reasons for their proffer. At the present  
20 time my ruling is that 3 and 4 are both received, 3 having  
21 already been received. Now 4 is received, but I do it with  
22 some doubt as to their worth.

23 MR. MILLER: We'll try to convince you otherwise.

24 JUDGE LUTON: Of course, you will. Certainly.

25 (The document that was previously

1 marked as EZ Exhibit No. 4 was  
2 received into evidence.)

3 JUDGE LUTON: All right. Let's proceed then. Now  
4 we get to 5. Mr. Meyer's is going to telling us about efforts  
5 to comply with FCC policies.

6 MR. BERFIELD: Your Honor, I have no objection to  
7 this exhibit subject, of course, to the review of those  
8 attachments which counsel spoke of.

9 JUDGE LUTON: Yes. Mr. Zauner?

10 MR. ZAUNER: Your Honor, could I just make sure that  
11 I have the right Exhibit No. 5? This is the --

12 MR. MILLER: I faxed it.

13 MR. ZAUNER: -- exhibit that you faxed to me  
14 yesterday?

15 MR. MILLER: Yeah. We had supplied you a copy the  
16 day after the exchange and then I faxed another copy  
17 yesterday.

18 MR. ZAUNER: Three page exhibit signed by Edward  
19 "Tex" Meyer. Okay. I have no objection.

20 JUDGE LUTON: This exhibit indicated in our  
21 discussion concerning the other -- the preceding exhibit is an  
22 effort to show that BZZ -- to show what? That it has complied  
23 with Commission rules and policies or that its efforts to  
24 comply have gone beyond the ordinary?

25 MR. MILLER: All of the above, Your Honor, yes.

1 JUDGE LUTON: And, excuse me, also it's presented in  
2 this form as opposed to a more detailed form like the  
3 preceding exhibit because these efforts are not as easily  
4 quantifiable? Is that it?

5 MR. MILLER: Yes, to some extent, Your Honor. To  
6 the extent that this deals with efforts to insure that the --  
7 and it does deal with efforts to insure that the programming  
8 is responsive, as in the first page, in the third paragraph  
9 and the fourth paragraph. To the extent that it deals with  
10 ascertainment efforts and Mr. Meyer's review of those efforts,  
11 I think we've made a fairly detailed showing in Exhibit 2, but  
12 to the extent that it deals with checks of the program logs,  
13 the various levels of review at the station and at  
14 Headquarters concerning these matters, and -- yes, it does  
15 show their -- BZZ's efforts and the efforts of the licensee  
16 itself to run a tight ship. And the last paragraph on page 3  
17 states that BZZ has never during the time that Mr. Meyer's  
18 been its General Manager received a notice of any FCC  
19 violations.

20 JUDGE LUTON: Okay. I understand what the effort  
21 is, but I -- my initial impression is that all this shows is  
22 average performance. Let's go to the next one. That's No. 6,  
23 statement of Mr. Box.

24 MR. MILLER: No. 5 was received in evidence?

25 JUDGE LUTON: I'm sorry. 5, yes. I'm going to

1 receive 5. If the parties object to 5, I'd like to have them  
2 state their objections?

3 MR. BERFIELD: No objection, Your Honor.

4 JUDGE LUTON: We've talked around it quite enough  
5 now. All right. 5 is received.

6 (The document that was previously  
7 marked as EZ Exhibit No. 5 was  
8 received into evidence.)

9 JUDGE LUTON: 6, Mr. Box, about multiple ownership  
10 interests? Any objections?

11 MR. BERFIELD: No objection, Your Honor.

12 JUDGE LUTON: All right. The Bureau have any?

13 MR. ZAUNER: The Bureau understands this is being  
14 offered primarily for the comparative aspect of the --

15 MR. MILLER: Under the diversification, yeah.

16 MR. ZAUNER: Diversification, yeah. We have no  
17 objection.

18 MR. BERFIELD: I will make one statement for the  
19 record. I'm not sure that this is a complete listing of all  
20 the stations that were owned by the licensee as of the cutoff  
21 date, but we'll check on that and that's something we can  
22 develop on cross if we need to, but I have no objection to the  
23 exhibit.

24 JUDGE LUTON: All right. 6 is received.

25 (The document that was previously



1 marked as EZ Exhibit No. 6 was  
2 received into evidence.)

3 JUDGE LUTON: 7, auxiliary power.

4 MR. BERFIELD: No objection, Your Honor.

5 JUDGE LUTON: All right. And Bureau, no objection?

6 MR. ZAUNER: No objection.

7 JUDGE LUTON: 7's received.

8 (The document that was previously  
9 marked as EZ Exhibit No. 7 was  
10 received into evidence.)

11 JUDGE LUTON: Broadcast experience of Mr. Kellar.  
12 That's 8.

13 MR. BERFIELD: Yes, Your Honor, if I may. I have no  
14 difficulty if this is offered just for background information  
15 of Mr. Kellar, but I would object if it's being offered for  
16 the -- laying a predicate for claiming integration credit  
17 since, as indicated on page 2 of Exhibit 8, the last full  
18 paragraph, the assertion is about an average of 5 hours a week  
19 to EZ matters which would not qualify for part-time  
20 integration credit under the Commission's criteria of at least  
21 20 hours a week. However, if it -- Mr. Kellar is the leading  
22 principle stockholder in the licensee and if this is submitted  
23 just essentially by way of background and predicate for his,  
24 for his testimony, I would not object on that basis, but I  
25 would -- I want to preserve my position on it's not entitled